

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY S. BERRINGER,  
Plaintiff,  
v.  
SALINAS VALLEY STATE PRISON,  
DEPARTMENT OF MENTAL HEALTH,  
Defendants.

No. C 06-00270 CW  
ORDER OF DISMISSAL

Plaintiff Anthony S. Berringer is a state prisoner who is currently incarcerated at Salinas Valley State Prison (SVSP). Plaintiff's original complaint alleged that around 6:15 AM on March 7, 2005, two Medical Technical Assistants (MTAs) woke him up for chow, one of them opened the food port and "scalding hot water . . . accidentally spilled on [him]." Plaintiff alleged that he suffered second degree burns on his right foot and ankle.

The Court reviewed the complaint pursuant to 28 U.S.C. § 1915A and found, liberally construing the allegations, that Plaintiff was attempting to assert a claim of a violation of his Eighth Amendment right to be free from cruel and unusual punishment. The Court dismissed the complaint with leave to amend upon finding that Plaintiff's allegations were insufficient to support an Eighth

1 Amendment claim on the following grounds. First, the only  
2 Defendants Plaintiff named were "Salinas Valley State Prison" and  
3 the "Department Mental Health Kitchen Staff Workers." The Court  
4 explained that Plaintiff may not refer to the defendants as a  
5 group, but must identify each involved defendant by name and link  
6 each person to a specific claim by explaining what each defendant  
7 did or failed to do that caused a violation of Plaintiff's  
8 constitutional rights. The Court noted that Plaintiff attempted to  
9 write the names of the two MTAs who spilled the water on his foot;  
10 however, the names were indecipherable. Second, the Court  
11 explained that even if the names were decipherable, Plaintiff would  
12 not have stated a claim against them because he alleged that the  
13 water was spilled accidentally, and mere negligence does not give  
14 rise to a constitutional claim. Third, Plaintiff had not alleged  
15 in his complaint that he had exhausted the required administrative  
16 remedies for this claim. Instead, he stated that the SVSP staff  
17 "lost his appeals and tampered with his documents."

18 The Court allowed Plaintiff to file an amended complaint to  
19 identify each involved defendant by name and describe what actions  
20 each defendant took that caused him harm, and how he was harmed by  
21 each individual defendant. In doing so, Plaintiff could not allege  
22 facts inconsistent with those alleged in his original complaint and  
23 he could not refer to the defendants as a group, i.e., "Salinas  
24 Valley State Prison" or the "Department Mental Health Kitchen  
25 Workers." Secondly, Plaintiff would have to provide evidence, in  
26 the form of a declaration or in the form of copies of returned  
27 administrative grievances, establishing that he should be excused

1 from the exhaustion requirement because prison officials refused to  
2 process his appeals.

3       On March 15, 2007, Plaintiff filed his amended complaint. The  
4 Court has reviewed the amended complaint and finds that it does not  
5 cure the pleading deficiencies identified in the Court's order  
6 dismissing the complaint with leave to amend. In the caption of  
7 the complaint, Plaintiff lists Defendants as "Salinas Valley State  
8 Prison" and "Department of Mental Health" even though the Court  
9 explained that he must name the defendants as individuals, not as a  
10 group. In the complaint, Plaintiff lists "SVSP Medical MTA Staff"  
11 as the defendant, instead of the individuals involved. Plaintiff's  
12 factual allegations merely repeat what he stated in his original  
13 complaint, that, on March 7, 2005, two MTAs woke him for chow and  
14 one of them opened the food port and poured scalding hot water on  
15 his left foot, causing second degree burns. In his claim for  
16 relief Plaintiff states he would like M. Chaverine to be terminated  
17 from her job, but he does not identify who this individual is, what  
18 she did, nor why she should be terminated. Furthermore, in regard  
19 to exhaustion of remedies, Plaintiff merely states that he did not  
20 pursue higher levels of appeals for his administrative complaint  
21 because "it was cancelled." Plaintiff does not explain what he  
22 means by saying the complaint was "cancelled." He also states that  
23 he did not pursue his appeal past the informal level because "the  
24 disposition was either lost, cancelled, or denied." Neither of  
25 these statements relieves Plaintiff of the requirement of  
26 exhausting his administrative appeals before he files a complaint  
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28

1 in federal court.<sup>1</sup>

2 Therefore, the Court finds that Plaintiff's allegations in his  
3 amended complaint do not state a claim for which relief may be  
4 granted. The complaint is dismissed with prejudice and judgment  
5 shall enter accordingly. The clerk shall close the file.

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7 IT IS SO ORDERED.

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9 Dated: 1/8/08



CLAUDIA WILKEN  
United States District Judge

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26 <sup>1</sup>Plaintiff has filed a separate document unrelated to the  
27 instant action, which indicates he cannot read or write. If  
28 Plaintiff's claim appeared to have merit, the Court could seek  
counsel to represent him pro bono. That is not the case, however.

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7 SALINAS VALLEY STATE PRISON et al,

8 Defendant.  
9 \_\_\_\_\_/

Case Number: CV06-00270 CW

**CERTIFICATE OF SERVICE**

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
11 Northern District of California.

12 That on January 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
15 in the Clerk's office.

16 Anthony Scott Berringer  
17 K-66652  
18 Pelican Bay State Prison  
19 P.O. Box 7500  
20 Crescent City, CA 95532

21 Dated: January 8, 2008

22 Richard W. Wieking, Clerk  
23 By: Sheilah Cahill, Deputy Clerk  
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